

AMENDED IN ASSEMBLY APRIL 28, 1998
AMENDED IN ASSEMBLY MARCH 31, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2707

Introduced by Assembly Member Perata
(Coauthor: Assembly Member Miller)
(Coauthors: Senators McPherson and Polanco)

February 23, 1998

An act to amend Sections 331, 331.1, 3050, 3060, 3062, 3066, 3067, 11713.3, and 11717 of, and to add Section 3065.2 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2707, as amended, Perata. Vehicles: New Motor Vehicle Board: franchises.

(1) Existing law defines the terms “franchise” and “franchisee” for purposes of the Vehicle Code.

This bill would revise those definitions.

(2) Existing law requires the New Motor Vehicle Board to, among other things, hear and decide protests presented by franchisees regarding specified matters.

This bill would include within the scope of those hearings a franchisee's protest regarding a franchisor's disapproval of the sale, transfer, or assignment of a franchise with the burden of proof at the hearings placed upon the franchisor. The bill would also set forth a specific procedure governing the sale,

transfer, or assignment of a franchise *or described portion of a franchise* to other persons.

The bill would provide that it is unreasonable for a franchisor to disapprove a sale, assignment, or transfer if the proposed transferee meets specific conditions.

(3) Under existing law, motor vehicle dealer franchisors are prohibited from terminating, or refusing to continue, any existing franchise unless specified requirements are met, including the requirement that a written notice be sent to franchise motor vehicle dealers concerning their rights to file certain protests with the New Motor Vehicle Board, as specified.

This bill would require additional information to be included in that notification.

(4) Under existing law, if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same line-make of vehicle is then represented, or seeks to relocate an existing motor vehicle dealership, the franchisor is required to notify, in writing, the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership within or into that market area.

This bill would require that written notification to each franchisee contain specified information concerning the franchisee's right to protest the action to the board.

(5) Existing law makes it a crime for licensed automotive manufacturers, manufacturer branches, distributors, or distributor branches to engage in certain conduct.

This bill would include in that listing of prohibited conduct the following: (a) the exercise of a right of first refusal or certain other similar rights unless specified conditions are met and (b) the unfair discrimination in favor of any dealership owned or controlled, by the above described entities.

(6) Because a violation of the above provisions would be a crime, the bill would impose a state-mandated local program.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 331 of the Vehicle Code is
2 amended to read:

3 331. A “franchise” is a written agreement between
4 two or more persons having all of the following
5 conditions:

6 (a) A commercial relationship of definite duration or
7 continuing indefinite duration.

8 (b) The franchisee is granted the right to sell or lease
9 at retail new motor vehicles manufactured or distributed
10 by the franchisor or the right to perform authorized
11 warranty repairs and service, or the right to perform any
12 combination of these activities.

13 (c) The franchisee constitutes a component of the
14 franchisor’s distribution system.

15 (d) The operation of the franchisee’s business is
16 substantially associated with the franchisor’s trademark,
17 trade name, advertising, or other commercial symbol
18 designating the franchisor.

19 (e) The operation of a portion of the franchisee’s
20 business is substantially reliant on the franchisor for a
21 continued supply of new vehicles, parts, or accessories.

22 SEC. 2. Section 331.1 of the Vehicle Code is amended
23 to read:

24 331.1. A “franchisee” is any person who, pursuant to
25 a franchise, receives new motor vehicles subject to
26 registration under this code or new off-highway
27 motorcycles, as defined in Section 436, from the
28 franchisor and who sells or leases the vehicles at retail or
29 any person who is authorized to perform authorized
30 warranty repairs and service, or the right to perform any
31 combination of these activities.

32 SEC. 3. Section 3050 of the Vehicle Code is amended
33 to read:

1 3050. The board shall do all of the following:

2 (a) Adopt rules and regulations in accordance with
3 Chapter 3.5 (commencing with Section 11340) of Part 1
4 of Division 3 of Title 2 of the Government Code
5 governing those matters that are specifically committed
6 to its jurisdiction.

7 (b) Hear and determine, within the limitations and in
8 accordance with the procedure provided, an appeal
9 presented by an applicant for, or holder of, a license as a
10 new motor vehicle dealer, manufacturer, manufacturer
11 branch, distributor, distributor branch, or representative
12 when the applicant or licensee submits an appeal
13 provided for in this chapter from a decision arising out of
14 the department.

15 (c) Consider any matter concerning the activities or
16 practices of any person applying for or holding a license
17 as a new motor vehicle dealer, manufacturer,
18 manufacturer branch, distributor, distributor branch, or
19 representative pursuant to Chapter 4 (commencing with
20 Section 11700) of Division 5 submitted by any person. A
21 member of the board who is a new motor vehicle dealer
22 may not participate in, hear, comment, advise other
23 members upon, or decide any matter considered by the
24 board pursuant to this subdivision that involves a dispute
25 between a franchisee and franchisor. After that
26 consideration, the board may do any one or any
27 combination of the following:

28 (1) Direct the department to conduct investigation of
29 matters that the board deems reasonable, and make a
30 written report on the results of the investigation to the
31 board within the time specified by the board.

32 (2) Undertake to mediate, arbitrate, or otherwise
33 resolve any honest difference of opinion or viewpoint
34 existing between any member of the public and any new
35 motor vehicle dealer, manufacturer, manufacturer
36 branch, distributor branch, or representative.

37 (3) Order the department to exercise any and all
38 authority or power that the department may have with
39 respect to the issuance, renewal, refusal to renew,
40 suspension, or revocation of the license of any new motor

1 vehicle dealer, manufacturer, manufacturer branch,
2 distributor, distributor branch, or representative as that
3 license is required under Chapter 4 (commencing with
4 Section 11700) of Division 5.

5 (d) Hear and decide, within the limitations and in
6 accordance with the procedure provided, a protest
7 presented by a franchisee pursuant to Section 3060, 3062,
8 3064, 3065, 3065.1, or 3065.2. A member of the board who
9 is a new motor vehicle dealer may not participate in, hear,
10 comment, advise other members upon, or decide, any
11 matter involving a protest filed pursuant to Article 4
12 (commencing with Section 3060), unless all parties to the
13 protest stipulate otherwise.

14 (e) Notwithstanding subdivisions (c) and (d), the
15 courts have jurisdiction over all common law and
16 statutory claims originally cognizable in the courts. For
17 those claims, a party may initiate an action directly in any
18 court of competent jurisdiction.

19 SEC. 4. Section 3060 of the Vehicle Code is amended
20 to read:

21 3060. (a) Notwithstanding Section 20999.1 of the
22 Business and Professions Code or the terms of any
23 franchise, no franchisor shall terminate or refuse to
24 continue any existing franchise unless all of the following
25 conditions are met:

26 (1) The franchisee and the board have received
27 written notice from the franchisor as follows:

28 (A) Sixty days before the effective date thereof setting
29 forth the specific grounds for termination or refusal to
30 continue.

31 (B) Fifteen days before the effective date thereof
32 setting forth the specific grounds with respect to any of
33 the following:

34 (i) Transfer of any ownership or interest in the
35 franchise without the consent of the franchisor, which
36 consent shall not be unreasonably withheld.

37 (ii) Misrepresentation by the franchisee in applying
38 for the franchise.

(iii) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.

(iv) Any unfair business practice after written warning thereof.

(v) Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle dealer or by order of the department.

(C) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, one of the following statements, whichever is applicable, ~~which shall be accompanied by a signed, written statement certifying that a copy of the notice has been filed with the board.~~

[To be inserted when a 60-day notice of termination is given.]

“NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right ~~may~~ will be waived.”

[To be inserted when a 15-day notice of termination is given.]

“NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal

1 procedure provided by the franchisor or your protest
2 right ~~may~~ will be waived.”

3 (2) Except as provided in Section 3050.7, the board
4 finds that there is good cause for termination or refusal to
5 continue, following a hearing called pursuant to Section
6 3066. The franchisee may file a protest with the board
7 within 30 days after receiving a 60-day notice, satisfying
8 the requirements of this section, or within 30 days after
9 the end of any appeal procedure provided by the
10 franchisor, or within 10 days after receiving a 15-day
11 notice, satisfying the requirements of this section, or
12 within 10 days after the end of any appeal procedure
13 provided by the franchisor. When a protest is filed, the
14 board shall advise the franchisor that a timely protest has
15 been filed, that a hearing is required pursuant to Section
16 3066, and that the franchisor may not terminate or refuse
17 to continue until the board makes its findings.

18 (3) The franchisor has received the written consent of
19 the franchisee, or the appropriate period for filing a
20 protest has elapsed.

21 (b) (1) Notwithstanding Section 20999.1 of the
22 Business and Professions Code or the terms of any
23 franchise, no franchisor shall modify or replace a
24 franchise with a succeeding franchise if the modification
25 or replacement would substantially affect the franchisee’s
26 sales or service obligations or investment, unless the
27 franchisor has first given the board and each affected
28 franchisee written notice thereof at least 60 days in
29 advance of the modification or replacement. Within 30
30 days of receipt of the notice, satisfying the requirement
31 of this section, or within 30 days after the end of any
32 appeal procedure provided by the franchisor, a
33 franchisee may file a protest with the board and the
34 modification or replacement does not become effective
35 until there is a finding by the board that there is good
36 cause for the modification or replacement. If, however, a
37 replacement franchise is the successor franchise to an
38 expiring or expired term franchise, the prior franchise
39 shall continue in effect until resolution of the protest by

1 the board. In the event of multiple protests, hearings shall
2 be consolidated to expedite the disposition of the issue.

3 (2) The written notice shall contain, on the first page
4 thereof in at least 12-point bold type and circumscribed
5 by a line to segregate it from the rest of the text, the
6 following statement ~~which shall be accompanied by a~~
7 ~~signed, written statement certifying that a copy of the~~
8 ~~notice has been filed with the board.:~~

9 “NOTICE TO DEALER: ~~You~~—Your franchise
10 agreement is being modified or replaced. If the
11 modification or replacement will substantially affect your
12 sales or service obligations or investment, you have the
13 right to file a protest with the NEW MOTOR VEHICLE
14 BOARD in Sacramento and have a hearing in which you
15 may protest the proposed modification or replacement of
16 your franchise under provisions of the California Vehicle
17 Code. You must file your protest with the board within 30
18 calendar days of your receipt of this notice or within 30
19 days after the end of any appeal procedure provided by
20 the franchisor or your protest rights ~~may~~ will be waived.”

21 SEC. 5. Section 3062 of the Vehicle Code is amended
22 to read:

23 3062. (a) (1) Except as otherwise provided in
24 subdivision (b), if a franchisor seeks to enter into a
25 franchise establishing an additional motor vehicle
26 dealership within a relevant market area where the same
27 line-make is then represented, or seeks to relocate an
28 existing motor vehicle dealership, the franchisor shall, in
29 writing, first notify the board and each franchisee in that
30 line-make in the relevant market area of the franchisor’s
31 intention to establish an additional dealership or to
32 relocate an existing dealership within or into that market
33 area. Within 20 days of receiving the notice, satisfying the
34 requirements of this section, or within 20 days after the
35 end of any appeal procedure provided by the franchisor,
36 any such franchisee may file with the board a protest to
37 the establishing or relocating of the dealership. If, within
38 this time, a franchisee files with the board a request for
39 additional time to file a protest, the board or its secretary,
40 upon a showing of good cause, may grant an additional 10

1 days to file the protest. When such a protest is filed, the
2 board shall inform the franchisor that a timely protest has
3 been filed, that a hearing is required pursuant to Section
4 3066, and that the franchisor shall not establish or relocate
5 the proposed dealership until the board has held a
6 hearing as provided in Section 3066, nor thereafter, if the
7 board has determined that there is good cause for not
8 permitting the dealership. In the event of multiple
9 protests, hearings may be consolidated to expedite the
10 disposition of the issue.

11 For the purposes of this section, the reopening in a
12 relevant market area of a dealership that has not been in
13 operation for one year or more shall be deemed the
14 establishment of an additional motor vehicle dealership.

15 (2) The written notice shall contain, on the first page
16 thereof in at least 12-point bold type and circumscribed
17 by a line to segregate it from the rest of the text, the
18 following statement ~~which shall be accompanied by a~~
19 ~~signed, written statement certifying that a copy of the~~
20 ~~notice has been filed with the board:~~

21 “NOTICE TO DEALER: You have the right to file a
22 protest with the NEW MOTOR VEHICLE BOARD in
23 Sacramento and have a hearing on your protest under the
24 terms of the California Vehicle Code if you oppose this
25 action. You must file your protest with the board within
26 20 days of your receipt of this notice, or within 20 days
27 after the end of any appeal procedure that is provided by
28 us to you. If within this time you file with the board a
29 request for additional time to file a protest, the board or
30 its secretary, upon a showing of good cause, may grant you
31 an additional 10 days to file the protest.”

32 (b) Subdivision (a) does not apply to either of the
33 following:

34 (1) The relocation of an existing dealership to any
35 location that is both within the same city as, and is within
36 one mile from, the existing dealership location.

37 (2) The establishment at any location that is both
38 within the same city as, and is within one-quarter mile
39 from, the location of a dealership of the same line-make
40 that has been out of operation for less than 90 days.

1 (c) Subdivision (a) does not apply to any display of
2 vehicles at a fair, exposition, or similar exhibit if no actual
3 sales are made at the event and the display does not
4 exceed 30 days. This subdivision shall not be construed to
5 prohibit a new vehicle dealer from establishing a branch
6 office for the purpose of selling vehicles at the fair,
7 exposition, or similar exhibit, even though that the event
8 is sponsored by a financial institution, as defined in
9 Section 31041 of the Financial Code or by a financial
10 institution and a licensed dealer. The establishment of
11 these branch offices, however, shall be in accordance with
12 subdivision (a) where applicable.

13 (d) For the purposes of this section, the reopening of
14 a dealership that has not been in operation for one year
15 or more shall be deemed the establishment of an
16 additional motor vehicle dealership.

17 SEC. 6. Section 3065.2 is added to the Vehicle Code,
18 to read:

19 3065.2. (a) Prior to the sale, transfer, or assignment of
20 a franchise *or the sale, transfer, or assignment of all or*
21 *substantially all of the assets of the franchised business or*
22 *a controlling interest in the franchised business* to
23 another person, the transferring franchisee shall notify
24 the franchisor of the franchisee's decision to sell, transfer,
25 or assign the franchise. The notification shall be in writing
26 and shall be personally served or sent by certified mail,
27 return receipt requested, or by a guaranteed overnight
28 delivery service that provides verification of delivery,
29 and shall include the following:

30 (1) The proposed transferee's name and address.

31 (2) A copy of the agreement or agreements to sell,
32 assign, or transfer the franchised business or its assets.

33 (3) The proposed transferee's written agreement to
34 comply with the terms of the franchise.

35 (b) Within 15 days after the franchisor receives notice
36 pursuant to subdivision (a), the proposed transferee shall
37 submit to the franchisor an application for approval to
38 become the successor franchisee. The application shall
39 include forms and related information generally utilized
40 by the franchisor in reviewing prospective franchisees,

1 provided those forms are readily made available to
2 existing franchisees. As soon as practicable after receipt
3 of the proposed transferee's application, the franchisor
4 shall notify the franchisee and the proposed transferee of
5 any information needed to make the application
6 complete.

7 (c) Not later than 60 days after receiving notice as
8 provided in subdivision (a) *and the proposed transferee's*
9 *completed application pursuant to subdivision (b)*, or as
10 extended by a written agreement between the franchisor
11 and franchisee, the franchisor shall determine whether to
12 approve or disapprove the sale, transfer, or assignment
13 and shall notify the franchisee of the approval or the
14 disapproval. The notification shall be in writing and shall
15 be personally served or sent by certified mail, return
16 receipt requested, or by a guaranteed overnight delivery
17 service that provides verification of delivery and shall be
18 directed to the franchisee. Any proposed sale,
19 assignment, or transfer shall be deemed approved, unless
20 disapproved by the franchisor in the manner provided by
21 this subdivision. If the proposed sale, assignment, or
22 transfer is disapproved, the franchisor shall include in the
23 notice of disapproval a statement setting forth the
24 ~~material~~ reasons for the disapproval. The written notice
25 of disapproval shall contain, on the first page thereof in
26 at least 12-point bold type and circumscribed by a line to
27 segregate it from the rest of the text, the following
28 statement:

29 "NOTICE TO DEALER: You have the right to file a
30 protest with the NEW MOTOR VEHICLE BOARD in
31 Sacramento and have a hearing in which you may protest
32 the disapproval of your proposed transfer. You must file
33 your protest with the board within 30 days of your receipt
34 of this notice or your protest right may be waived."

35 (d) It is unreasonable for a franchisor to disapprove
36 the sale, assignment, or transfer of a franchise if the
37 proposed transferee meets all of the following:

38 (1) The proposed transferee is capable of being issued
39 a dealer license pursuant to Chapter 4 (commencing with
40 Section 11700) of Division 5.

(2) The proposed transferee meets the franchisor's written, reasonable, and uniformly applied standards and qualifications relating to business experience and financial qualifications, provided those standards and qualifications, if any, are in effect at the time of the proposed sale, assignment, or transfer, and are readily made available to existing franchisees.

(3) The transfer to the proposed transferee will not exceed the franchisor's written, reasonable, and uniformly applied restrictions, if any, related to multiple ownership or control of franchises of the same line-made by a single person, entity, or group, provided those restrictions are specified in the franchise. Any change of the franchisor's multiple ownership restrictions is a franchise modification that requires the franchisor to give notice pursuant to subdivision (b) of Section 3060.

(e) Within 30 days of receipt of a notice from the franchisor of its disapproval of the franchisee's proposed sale, assignment, or transfer, the franchisee may file a protest with the board. When a timely protest is filed, the board shall notify the franchisor of the protest and that a hearing is required pursuant to Section 3066. The franchisor shall have the burden of establishing that its disapproval of the proposed sale, assignment, or transfer was not unreasonable. If the board determines that the franchisor has unreasonably withheld consent for the sale, transfer, or assignment, the board shall issue an order requiring the franchisor to approve the proposed sale, transfer, or assignment.

(f) For purposes of this section, "proposed transferee" includes the proposed owners of the franchised business and the individual or individuals who will have full managerial authority for operation of the franchised business.

SEC. 7. Section 3066 of the Vehicle Code is amended to read:

3066. (a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, 3065, 3065.1, or 3065.2, the board shall fix a time, which shall be within 60 days of the order, and place of hearing, and shall send by registered

1 mail a copy of the order to the franchisor, the protesting
2 franchisee, and all individuals and groups which have
3 requested notification by the board of protests and
4 decisions of the board. Except in any case involving a
5 franchisee who deals exclusively in motorcycles, the
6 board or its secretary may, upon a showing of good cause,
7 accelerate or postpone the date initially established for a
8 hearing, but in no event shall the hearing be rescheduled
9 more than 90 days after the board's initial order. For the
10 purpose of accelerating or postponing a hearing date,
11 "good cause" includes, but is not limited to, the effects
12 upon, and any irreparable harm to, the parties or
13 interested persons or groups if the request for a change
14 in hearing date is not granted. The board, or a hearing
15 officer designated by the board, shall hear and consider
16 the oral and documented evidence introduced by the
17 parties and other interested individuals and groups, and
18 the board shall make its decision solely on the record so
19 made. Chapter 4.5 (commencing with Section 11400) of
20 Part 1 of Division 3 of Title 2 of the Government Code and
21 Sections 11507.3, 11507.6, 11507.7, 11511, 11513, 11514,
22 11515, and 11517 of the Government Code apply to these
23 proceedings.

24 (b) In any hearing on a protest filed pursuant to
25 Section 3060 or 3062, the franchisor shall have the burden
26 of proof to establish that there is good cause to modify,
27 replace, terminate, or refuse to continue a franchise. The
28 franchisee shall have the burden of proof to establish that
29 there is good cause not to enter into a franchise
30 establishing or relocating an additional motor vehicle
31 dealership.

32 (c) In any hearing on a protest alleging a violation of,
33 or filed pursuant to, Section 3064, 3065, or 3065.1, the
34 franchisee shall have the burden of proof, but the
35 franchisor has the burden of proof to establish that a
36 franchisee acted with intent to defraud the franchisor
37 where that issue is material to ~~the protest~~ *a protest filed*
38 *pursuant to Section 3065 or 3065.1*. In any hearing on a
39 protest filed pursuant to Section 3065.2, the franchisor
40 shall have the burden of proof.

1 (d) A member of the board who is a new motor vehicle
2 dealer may not participate in, hear, comment, or advise
3 other members upon, or decide, any matter involving a
4 protest filed pursuant to this article.

5 SEC. 8. Section 3067 of the Vehicle Code is amended
6 to read:

7 3067. (a) The decision of the board shall be in writing
8 and shall contain findings of fact and a determination of
9 the issues presented. The decision shall sustain,
10 conditionally sustain, overrule, or conditionally overrule
11 the protest. Any conditions imposed by the board shall be
12 for the purpose of assuring performance of binding
13 contractual agreements between franchisees and
14 franchisors or otherwise serving the purposes of this
15 article. If the board fails to act within 30 days after such
16 hearing, within 30 days after the board receives a
17 proposed decision where the case is heard before a
18 hearing officer alone, or within such period as may be
19 necessitated by Section 11517 of the Government Code or
20 as may be mutually agreed upon by the parties, then the
21 proposed action shall be deemed to be approved. Copies
22 of the board's decision shall be delivered to the parties
23 personally or sent to them by registered mail, as well as
24 to all individuals and groups, which have requested
25 notification by the board of protests and decisions by the
26 board. The board's decision shall be final upon its delivery
27 or mailing and no reconsideration or rehearing shall be
28 permitted.

29 (b) Notwithstanding subdivision (b) of Section 11517
30 of the Government Code, if a protest is heard by a hearing
31 officer alone, 10 days after receipt by the board of the
32 hearing officer's proposed decision, a copy of the
33 proposed decision shall be filed by the board as a public
34 record and a copy shall be served by the board on each
35 party and his or her attorney.

36 SEC. 9. Section 11713.3 of the Vehicle Code is
37 amended to read:

38 11713.3. It is unlawful and a violation of this code for
39 any manufacturer, manufacturer branch, distributor, or

1 distributor branch licensed under this code to do any of
2 the following:

3 (a) To refuse or fail to deliver in reasonable quantities
4 and within a reasonable time after receipt of an order
5 from a dealer having a franchise for the retail sale of any
6 new vehicle sold or distributed by the manufacturer or
7 distributor, any new vehicle or parts or accessories to new
8 vehicles as are covered by the franchise, if the vehicle,
9 parts, or accessories are publicly advertised as being
10 available for delivery or actually being delivered. This
11 subdivision is not violated, however, if the failure is
12 caused by acts or causes beyond the control of the
13 manufacturer, manufacturer branch, distributor, or
14 distributor branch.

15 (b) To prevent or require, or attempt to prevent or
16 require, by contract or otherwise, any change in the
17 capital structure of a dealership or the means by or
18 through which the dealer finances the operation of the
19 dealership, provided that the dealer at all times meets any
20 reasonable capital standards agreed to by the dealer and
21 the manufacturer or distributor, and also provided that
22 no change in capital structure shall cause a change in the
23 principal management or have the effect of a sale of the
24 franchise without the consent of the manufacturer or
25 distributor.

26 (c) To prevent or require, or attempt to prevent or
27 require, a dealer to change the executive management of
28 a dealership, other than the principal dealership operator
29 or operators if the franchise was granted the dealer in
30 reliance upon the personal qualifications of such person
31 or persons.

32 (d) Except as provided in subdivision (t), to prevent
33 or require, or attempt to prevent or require, by contract
34 or otherwise, any dealer, or any officer, partner, or
35 stockholder of any dealership, the sale or transfer of any
36 part of the interest of any of them to any other person or
37 persons. No dealer, officer, partner, or stockholder shall,
38 however, have the right to sell, transfer, or assign the
39 franchise, or any right thereunder, without the consent of

1 the manufacturer or distributor except that the consent
2 shall not be unreasonably withheld.

3 (e) To prevent, or attempt to prevent, a dealer from
4 receiving fair and reasonable compensation for the value
5 of the franchised business. There shall be no transfer or
6 assignment of the dealer's franchise without the consent
7 of the manufacturer or distributor, which consent shall
8 not be unreasonably withheld or conditioned upon the
9 release, assignment, novation, waiver, estoppel, or
10 modification of any claim or defense by the dealer.

11 (f) To obtain money, goods, service, or any other
12 benefit from any other person with whom the dealer does
13 business, on account of, or in relation to, the transaction
14 between the dealer and that other person, other than for
15 compensation for services rendered, unless the benefit is
16 promptly accounted for, and transmitted to, the dealer.

17 (g) To require a dealer to prospectively assent to a
18 release, assignment, novation, waiver, or estoppel which
19 would relieve any person from liability to be imposed by
20 this article or to require any controversy between a
21 dealer and a manufacturer, distributor, or representative,
22 to be referred to any person other than the board, if the
23 referral would be binding on the dealer. This subdivision
24 does not, however, prohibit arbitration before an
25 independent arbitrator.

26 (h) To increase prices of motor vehicles which the
27 dealer had ordered for private retail consumers prior to
28 the dealer's receipt of the written official price increase
29 notification. A sales contract signed by a private retail
30 consumer is evidence of each such order. In the event of
31 manufacturer price reductions, the amount of the
32 reduction received by a dealer shall be passed on to the
33 private retail consumer by the dealer if the retail price
34 was negotiated on the basis of the previous higher price
35 to the dealer. Price reductions apply to all vehicles in the
36 dealer's inventory which were subject to the price
37 reduction. Price differences applicable to new model or
38 series motor vehicles at the time of the introduction of
39 new models or series shall not be considered a price
40 increase or price decrease. Price changes caused by

1 either (1) the addition to a motor vehicle of required or
2 optional equipment pursuant to state or federal law, or
3 (2) revaluation of the United States dollar in the case of
4 foreign-make vehicles, are not subject to this subdivision.

5 (i) To fail to pay to a dealer, within a reasonable time
6 following receipt of a valid claim by a dealer thereof, any
7 payment agreed to be made by the manufacturer or
8 distributor to the dealer by reason of the fact that a new
9 vehicle of a prior year model is in the dealer's inventory
10 at the time of introduction of new model vehicles.

11 (j) To deny the widow or heirs designated by a
12 deceased owner of a dealership, the opportunity to
13 participate in the ownership of the dealership or
14 successor dealership under a valid franchise for a
15 reasonable time after the death of the owner.

16 (k) To offer any refunds or other types of inducements
17 to any person for the purchase of new motor vehicles of
18 a certain line-make to be sold to the state or any political
19 subdivision thereof without making the same offer to all
20 other dealers in the same line-make within the relevant
21 market area.

22 (l) To modify, replace, enter into, relocate, terminate
23 or refuse to renew a franchise in violation of Article 4
24 (commencing with Section 3060) of Chapter 6 of Division
25 2.

26 (m) To employ a person as a representative who has
27 not been licensed pursuant to Article 3 (commencing
28 with Section 11900) of Chapter 4 of Division 5.

29 (n) To deny any dealer the right of free association
30 with any other dealer for any lawful purpose.

31 (o) To compete with a dealer in the same line-make
32 operating under an agreement or franchise from a
33 manufacturer or distributor in the relevant market area.
34 A manufacturer or distributor shall not, however, be
35 deemed to be competing when operating a dealership
36 either temporarily for a reasonable period, or in a bona
37 fide retail operation which is for sale to any qualified
38 independent person at a fair and reasonable price, or in
39 a bona fide relationship in which an independent person
40 has made a significant investment subject to loss in the

1 dealership and can reasonably expect to acquire full
2 ownership of the dealership on reasonable terms and
3 conditions. A distributor shall not be deemed to be
4 competing when a wholly owned subsidiary corporation
5 of the distributor sells motor vehicles at retail, if, for at
6 least three years prior to January 1, 1973, the subsidiary
7 corporation has been a wholly owned subsidiary of the
8 distributor and engaged in the sale of vehicles at retail.

9 (p) To unfairly discriminate among its franchisees
10 with respect to warranty reimbursement or authority
11 granted its franchisees to make warranty adjustments
12 with retail customers.

13 (q) To sell vehicles to persons not licensed under this
14 chapter for resale.

15 (r) To fail to affix an identification number to any park
16 trailer, as described in subdivision (b) of Section 18010 of
17 the Health and Safety Code, which is manufactured on or
18 after January 1, 1987, and which does not clearly identify
19 the unit as a park trailer to the department. The
20 configuration of the identification number shall be
21 approved by the department.

22 (s) To dishonor a warranty, rebate, or other incentive
23 offered to the public or a dealer in connection with the
24 retail sale of a new motor vehicle, based solely upon the
25 fact that an autobroker arranged or negotiated the sale.
26 This subdivision shall not prohibit the disallowance of that
27 rebate or incentive if the purchaser or dealer is ineligible
28 to receive the rebate or incentive pursuant to any other
29 term or condition of a rebate or incentive program.

30 (t) To exercise a right of first refusal or any other right
31 requiring a franchisee or any owner thereof to sell,
32 transfer, or assign to the franchisor, or to any nominee of
33 the franchisor, all or any material part of the franchised
34 business or of the assets thereof unless all of the following
35 requirements are met:

36 (1) The franchise authorizes the franchisor to exercise
37 a right of first refusal to acquire the franchised business
38 or assets thereof in the event of a proposed sale, transfer
39 or assignment.

1 (2) The franchisor gives written notice of its exercise
2 of the right of first refusal no later than 30–45 days after
3 the franchisor receives the notice as provided in
4 subdivision (a) of Section 3065.2.

5 (3) The sale, transfer, or assignment being proposed
6 relates to not less than all or substantially all of the assets
7 of the franchised business or to a controlling interest in
8 the franchised business.

9 (4) The proposed transferee is neither a family
10 member of an owner of the franchised business, nor a
11 managerial employee of the franchisee owning 15
12 percent or more of the franchised business, nor a
13 corporation, partnership, or other legal entity owned by
14 the existing owners of the franchised business. For
15 purposes of this paragraph, a “family member” means the
16 spouse of an owner of the franchised business, the child,
17 grandchild, brother, sister, or parent of an owner, or a
18 spouse of one of those family members. Nothing
19 contained in this paragraph limits the rights of the
20 franchisor to disapprove a proposed transferee as
21 provided in Section 3065.2.

22 (5) Upon the franchisor’s exercise of the right of first
23 refusal, the consideration paid by the franchisor to the
24 franchisee and owners of the franchised business shall
25 equal or exceed all consideration that each of them were
26 to have received under the terms of, or in connection
27 with, the proposed sale, assignment, or transfer, and the
28 franchisor shall comply with all the terms and conditions
29 of the agreement or agreements to sell, transfer, or assign
30 the franchised business.

31 (6) The franchisor shall reimburse the proposed
32 transferee for any—~~reasonable~~ expenses paid or incurred
33 by the proposed transferee in evaluation, investigating,
34 and negotiating the proposed transfer *to the extent those*
35 *expenses do not exceed the usual, customary, and*
36 *reasonable fees charged for similar work done in the area*
37 *in which the franchised business is located.* These
38 expenses include, but are not limited to, legal and
39 accounting expenses, and expenses incurred for title
40 reports and environmental or other investigations of any

1 real property on which the franchisee's operations are
2 conducted. The proposed transferee shall provide the
3 franchisor a written itemization of those expenses,
4 ~~accompanied by supporting documentation, if any,~~
5 ~~within 30 days after the franchisee receives notice of the~~
6 ~~franchisor's exercise of its right of first refusal. The and a~~
7 *copy of all nonprivileged reports and studies for which*
8 *expenses were incurred, if any, within 30 days of the*
9 *proposed transferee's receipt of a written request from*
10 *the franchisor for that accounting. The franchisor shall*
11 *make payment within 30 days of receipt of the*
12 *itemization. Upon reimbursement, the proposed*
13 ~~transferee shall provide the franchisor with all reports~~
14 ~~and studies. exercising the right of first refusal.~~

15 (u) To unfairly discriminate in favor of any dealership
16 owned or controlled, in whole or part, by a manufacturer
17 or distributor or an entity that controls or is controlled by
18 the manufacturer or distributor. Nothing in this
19 subdivision shall be interpreted to prohibit a franchisor
20 from granting a franchise to prospective franchisees or
21 assisting those franchisees *during the course of the*
22 *franchise relationship* as part of a program or programs
23 to make franchises available to persons lacking capital,
24 training, business experience, or other qualifications
25 ordinarily required of prospective franchisees.

26 SEC. 10. Section 11717 of the Vehicle Code is
27 amended to read:

28 11717. (a) Every occupational license and special
29 plate issued under this article shall be valid for a period
30 of one year from midnight of the last day of the month of
31 issuance. Except as provided in subdivision (c), renewal
32 of the occupational license and special plates for the
33 ensuing year may be obtained by the person to whom the
34 occupational license and special plates were issued upon
35 application to the department and payment of the fee
36 provided in this code.

37 (b) Every application for the renewal of an
38 occupational license and special plates which expire
39 pursuant to this section shall be made by the person to
40 whom issued not more than 90 days prior to the expiration

1 date, and shall be made by presenting the completed
2 application form provided by the department and by
3 payment of the full annual renewal fee for the
4 occupational license and special plates.

5 (c) If the application for renewal of the occupational
6 license and special plates is not made by midnight of the
7 expiration date, the application may be made within 30
8 days following expiration of the license by paying the
9 annual renewal fee and a penalty fee equal to the amount
10 of the original application fee for each occupational
11 license held. A penalty as specified in Sections 9553 and
12 9554 shall also be added to each special plate renewed
13 during the 30-day period following expiration of the
14 special plates.

15 (d) In no event may the licensee renew the
16 occupational license or special plates after the expiration
17 of the 30-day period authorized in subdivision (c).

18 (e) Notwithstanding the effective date of any
19 franchise, all manufacturer and distributor licenses and
20 renewals thereof are issued subject to this article and
21 Chapter 6 (commencing with Section 3000) of Division
22 2 and any regulation adopted by the department or the
23 board under the authority vested in them that is in effect
24 on the date the license is issued or the date of license
25 renewal, whichever is later.

26 SEC. 11. No reimbursement is required by this act
27 pursuant to Section 6 of Article XIII B of the California
28 Constitution because the only costs that may be incurred
29 by a local agency or school district will be incurred
30 because this act creates a new crime or infraction,
31 eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition
34 of a crime within the meaning of Section 6 of Article
35 XIII B of the California Constitution.

36 Notwithstanding Section 17580 of the Government
37 Code, unless otherwise specified, the provisions of this act

1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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